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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/428,018	10/27/99	BELL L	AMERGN.016C1

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EXAMINER	
DOERRLER, W	
ART UNIT	**PAPER NUMBER**
3744	5

DATE MAILED: 03/24/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/428,018	Applicant(s) Bell
	Examiner William C. Doerrler	Group Art Unit 3744

☒ Responsive to communication(s) filed on *Feb 22, 2000* .

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *three* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1, 2, and 69-98* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1, 2, and 69-98* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). *4*

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Claim Objections

1. The numbering of claims is not accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 3-32 been renumbered 69-98.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 95-98 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by either Pietsch or Panas.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 73-75,79,80,87,88,89 and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pietsch in view of Quisenberry et al.

Pietsch discloses applicant's basic inventive concept, a rotary thermoelectric heat exchanger, substantially as claimed with the exception of forming the heat transfer surfaces as a folded sheet of a thermally conductive material. Quisenberry et al shows this feature to be old in the thermoelectric heat exchanger art. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention from the teaching of Quisenberry et al to modify the rotary thermoelectric heat exchanger of Pietsch by forming the heat transfer surfaces as folded sheets of a thermally conductive material to obtain a heat exchanger which is effective and easily produced. In regard to claim 80, dimensions of disclosed parts are considered matters of design choice and not patentable invention unless a showing can be made of alleged criticality or new and unexpected results. In regard to claim 87, Official Notice is taken that thermoelectric cooled portable coolers with air transfer across both surfaces are well known in the art and as such would have been an obvious modification for an ordinary practitioner in the art to produce a more compact portable cooler.

6. Claims 93 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pietsch in view of Frantti.

Pietsch discloses applicant's basic inventive concept, a rotary thermoelectric heat exchanger, substantially as claimed with the exception of placing the fan motor in a central opening of the heat exchanger. Frantti shows this feature to be old in the thermoelectric heat exchanger art. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention from the teaching of Frantti to modify the rotary thermoelectric heat exchanger of Pietsch by placing the fan motor in a central opening in the heat exchanger to provide efficient air flow in a compact package.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1,2 and 69-97 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-61 of copending

Application No. 09/076,518. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims differ from the earlier claims only in obvious variants such as the use of known heat exchangers and obvious grammatical changes. The use of folded heat exchangers and fans placed in the center of the heat exchanger are considered obvious to an ordinary practitioner in the art and not patentable invention to derive a thermoelectric heat transfer device which is effective and compact.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Doerrler whose telephone number is (703) 308-0696.

WILLIAM DOERRLER
PRIMARY EXAMINER

William C. Doerrler
Patent Examiner
TC 3744
March 22, 2000